

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD BEELBY,

Petitioner,

CASE NO. 2:12-cv-13659

HONORABLE DENISE PAGE HOOD

v.

THOMAS BIRKETT,

Respondent.

**ORDER DENYING WITHOUT PREJUDICE PETITIONER'S MOTION TO EXPAND
RECORD AND FOR EVIDENTIARY HEARING [DKT. 9]**

On August 17, 2012, Petitioner Marvin Miles, a state inmate, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, alleging that he is incarcerated in violation of his constitutional rights. Pending before the Court is Petitioner's motion to expand the record and for an evidentiary hearing. For the reasons set forth below, the Court will deny the motion without prejudice.

Petitioner's motion concerns what he deems is an inadequate factual record made regarding his claims in the state court. He alleges that he attempted to expand the record in state court, but his efforts were thwarted. He seeks to expand the record here with documentation or to expand it by way of an evidentiary hearing.

In *Cullen v. Pinholster*, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011), the Supreme Court held that where habeas claims had been decided on their merits in state court, as was the case here, a federal court's review under 28 U.S.C. section 2254(d)(1)—whether the state court determination was contrary to or an unreasonable application of established federal law—must be confined to the record that was before the state court. 131 S. Ct. at 1398. The *Pinholster* Court specifically found

that the District Court should not have held an evidentiary hearing regarding Pinholster's claims until after the Court determined that the petition survived review under Section 2254(d)(1). *Id.*, at 1398. Therefore, the Court will deny without prejudice Petitioner's motion for an evidentiary hearing. The Court will reconsider the request if it Court determines that some or all of Petitioner's claims survive review under Section 2254(d)(1).

Accordingly, **IT IS ORDERED** that Petitioner's motion to expand the record or for an evidentiary hearing [dkt. 9] is **DENIED WITHOUT PREJUDICE**.

SO ORDERED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: November 8, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 8, 2012, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager